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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,465	11/26/2001	John Close	DT:0103-CP1	1510
23669	7590	06/07/2006	EXAMINER	
HUFFMAN LAW GROUP, P.C. 1832 N. CASCADE AVE. COLORADO SPRINGS, CO 80907-7449			JABR, FADEY S	
			ART UNIT	PAPER NUMBER
			3639	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/994,465	CLOSE ET AL.	
	Examiner	Art Unit	
	Fadey S. Jabr	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,11-26 and 28-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3,5-7,11-26 and 28-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/10/06, 4/11/06, 4/11/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims **4, 8-10 and 27** have been canceled. Claims **1, 5-7, 11-20 and 28** have been amended. Claims **1-3, 5-7, 11-26 and 28-32** remain pending and are again presented for examination.

Terminal Disclaimer

1. The terminal disclaimer filed on 03 March 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,553,352 B2 and any patent granted on Application Number 09/999078 and 09/999079 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

2. Applicant's corrections to the drawings filed 4 March 2006 have been considered and are acceptable.
3. Applicant's amendment to the specification filed 4 March 2006 have been considered and are acceptable.
4. Applicant's amendments filed 4 March 2006, with respect to the rejection under 35 U.S.C. section 112, second paragraph, have been fully considered and are acceptable.
5. Applicant's amendments filed 4 March 2006, with respect to the Double Patenting Rejection, have been fully considered and are withdrawn.

6. Applicant's arguments filed 4 March 2006, with respect to the rejection under 35 U.S.C. section 102(e), have been fully considered but they are not persuasive.
7. Applicant argues (with respect to claims 1 and 20) that Kalyan et al. fails to disclose an interface enabling a user to determining optimum prices of products for sale. Examiner notes that Kalyan discloses his invention is beneficial in a number of areas, one being pricing. It is well known in the art that in a business environment optimizing prices is done in order to enhance revenue. Also, Kalyan discloses optimizing the prices for the components are a function of controlling the sale of the product (Col. 2, line 44-Col. 3, line 3; Col. 3, lines 60-67). Further, Kalyan discloses a price-demand curve that is used to determine an optimal price to charge by balancing supply with demand (Col. 10, lines 29-34). Lastly, Kalyan et al. discloses computer implemented screens and modules (demand analyzer, forecasting engine and optimizer modules) (Col. 13, lines 48-60).
8. Applicant argues (with respect to claim 32) that Kalyan et al. fails to disclose taking into account calculated activity based costs when determining the optimum prices. Examiner notes that Kalyan discloses a manufacturer who determines the value of his component supply in order to calculate pricing for the product (made up of the components). Also, the prices of the products in Kalyan are based on the amount of components consumed by the product (Col. 7, lines 37-63).
9. Applicant argues (with respect to claim 32) that Kalyan et al. fails to disclose selectively limiting the number of prices that are optimized. Examiner notes that Kalyan discloses a number, M , of standard products being offered for sale, where the offered price, $P_{sub k}$, for the

k^{th} product (where $k=1, 2, \dots M$) is limited by the value of M . Therefore, the number of prices that are optimized are restricted by the value of M .

10. Applicant argues that Kalyan et al. fails to disclose prioritization of optimization rules of where a price optimization procedure is configured to relax constraints of lower priority conflicting rules to render the optimization scenario feasible. Examiner notes that Kalyan et al. discloses a truncated form of the distribution can be used to disallow negative values, which would allow the optimization scenario to become feasible (Col. 4, lines 45-47).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims **1-3, 5-7, 11-26 and 28-32** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalyan et al, U.S. Patent No. 6,826,538 B1 in view of Ouimet et al, U.S. Patent No. 6,308,162 B1 and Phillips et al., Pub. No US2002/0116348 A1.

As per **Claim 1**, Kalyan et al. discloses a method wherein an interface enabling a user to determine optimum prices of products for sale, comprising:

a scenario/results processor, configured to enable a user to prescribe an optimization scenario, and configured to present the optimum prices to said user, wherein the optimum prices are determined by execution of said optimization scenario, and wherein said optimum

prices are determined based upon estimated product demand and calculated activity based costs, said scenario/results processor comprising

(Col. 2, lines 46-67; Col. 3, lines 1-3; Col. 7, lines 53-63):

- an input/output processor, configured to acquire data corresponding to said optimization scenario from said user, and configured to distribute optimization results to said user (Col. 2, lines 56-59; Col. 3, lines 32-38; Col. 7, lines 53-63, also see Figure 3); and
- a scenario controller, coupled to said input/output processor, configured to control acquisition of said data and distribution of said optimization results in accordance with a price optimization procedure, wherein said price optimization procedure is configured to relax constraints of lower priority conflicting rules to render said optimization scenario feasible

(Col. 2, lines 56-59; Col. 4, lines 36-47; Col. 19, lines 10-27; Col. 20, lines 1-8).

Kalyan fails to disclose a method wherein said input/output processor comprises:

- a template controller, configured to provide first price optimization templates and second price optimization templates, wherein said price optimization templates are presented to said user to allow for prescription of said optimization scenario, and for distribution of said optimization results; and
- a command interpreter; configured to extract commands from said first price optimization templates executed by said user, and configured to populate said second price optimization templates according to result data provided for presentation to said user.

However, Ouimet et al. teaches presenting the user with menus that acquire data and distribute results to the user based on the acquired data (Col. 3, lines 27-67; Col. 4, lines 1-15, 43-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include menus that acquire and distribute data to and from the user as taught by Ouimet et al. because it greatly improves the efficiency and convenience of the system by providing the user with a system that is user-friendly.

Kalyan et al. fails to disclose a method wherein said first price optimization template comprise: a plurality of new scenario templates, configured to enable said user to prescribe scenario parameters corresponding to said optimization scenario. However, Ouimet et al. teaches allowing a user to define scenario parameters (Col. 4, lines 42-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include a menu wherein a user is able to define scenario parameters as taught by Ouimet et al. because it greatly improves the convenience of the system by providing the user with convenience and a system that is user-friendly.

Kalyan et al. fails to disclose:

- providing a products template, for specifying the products for sale for which the optimum prices are to be determined, wherein the products for sale may span more than one of the plurality of demand groups; and
- providing a category template, for specifying a product category for price optimization, wherein the product category comprises a plurality of demand groups,

each of said plurality of demand groups configured to categorize a set of highly correlated products, wherein said highly.

However, Ouimet et al. teaches a menu interface for inputting data. Ouimet et al. also teaches providing a store manager with optimum prices for which to items that are to be sold (Col. 4, lines 57-64). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include inputting the items whose prices are to be optimized.

Phillips et al. teaches categorizing products into categories and then optimizing the prices for those products (Para. 5, 13, 34 and 35). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include grouping products into categories. Phillips et al. provides motivation for grouping products into categories because the optimization model becomes easier to manage due to fewer sets of data (Para. 34).

Kalyan et al. fails to disclose a method wherein said plurality of new scenario templates further comprises: a locations template, for specifying a plurality of store groups for which the optimum prices are to be determined, wherein, when determining the optimum prices, the apparatus employs portions of said data that correspond to said plurality of store groups. However, Ouimet et al. teaches determining the optimum prices for one store (Col. 10, lines 34-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include specifying for which store locations to determine the optimum prices as taught by Ouimet et al. because a user would

want to optimize the prices for more than one store in order to maximize profits throughout all store locations.

As per Claims 2, 3, 22 and 23, Kalyan discloses all of the limitations of claims 1 and 20. Kalyan fails to disclose a method wherein said data is acquired from said user over the Internet via a packet-switched protocol, or acquired and distributed through an electronic file. However, Ouimet et al. teaches a method wherein data can be acquired over the Internet or via computer readable medium (Col. 3, lines 43-49, 56-67; see also Figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include acquiring data from a user via the Internet or an electronic file as taught by Ouimet et al. because it greatly improves the convenience of the system by providing the user with convenience and a system that is user-friendly.

As per Claims 5-7 and 24-26, Kalyan et al. discloses all of the limitations in claims 1 and 20. Kalyan et al. fails to disclose a method wherein said first and second price optimization templates are provided as hypertext markup language (HTML), extensible markup language (XML), and Java applets. However, Ouimet et al. teaches transmitting the menus via the Internet (Col. 3, lines 43-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include providing the menus using common computer languages as taught by Ouimet et al. because it greatly improves the efficiency of the system by providing the user with a system that is user-friendly.

As per **Claim 11**, Kalyan et al. discloses all of the limitations in claim 1. Kalyan et al. fails to disclose a method wherein said plurality of new scenario templates further comprises: a locations template, for specifying a plurality of store groups for which the optimum prices are to be determined, wherein, when determining the optimum prices, the apparatus employs portions of said data that correspond to said plurality of store groups. However, Ouimet et al. teaches determining the optimum prices for one store (Col. 10, lines 34-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include specifying for which store locations to determine the optimum prices as taught by Ouimet et al. because a user would want to optimize the prices for more than one store in order to maximize profits throughout all store locations.

As per **Claims 12**, Kalyan et al. further discloses a method wherein said plurality of new scenario templates further comprises: a time horizon template, for specifying a time period for which the optimum prices are to be determined (Col. 7, lines 44-57).

As per **Claim 13**, Kalyan et al. further discloses a method wherein said plurality of new scenario templates further comprises:

- an at-large rules template, for specifying rules to govern determination of the optimum prices, said rules comprising:
- maximum allowable price swing for each of the products for sale; and

- maximum allowable swing for average price of each demand group within said plurality of demand groups (Col. 3, lines 12-13, 60-67; Col. 14, lines 1-17).

As per **Claim 14**, Kalyan et al. further discloses a method wherein said plurality of new scenario templates further comprises:

a strategy template, for specifying a merchandising performance figure of merit, and for specifying limits for changes in sales volume (Col. 3, lines 12-13; Col. 4, lines 14-17).

As per **Claim 15**, Kalyan et al. discloses all of the limitations of claim 1. Kalyan et al. discloses a method wherein options for specification of said merchandising performance figure of merit comprise net profit and revenue (Col. 4, lines 16-17; Col. 11, lines 14-15). Kalyan et al. fails to disclose wherein merchandising performance figure of merit comprises sales volume. However, Ouimet et al. teaches merchandising performance figure of merit comprises sales volume (Col. 5, lines 47-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include sales volume as a merchandising performance figure of merit as taught by Ouimet et al. because a user would want to optimize prices in order to achieve a particular level of sales (Col. 5, lines 47-50).

As per **Claim 16**, Kalyan et al. discloses all of the limitations of claim 1. Kalyan et al. fails to disclose a method wherein said first price optimization templates further comprise:

a configured rules template, configured to enable said user to prescribe a priority corresponding to each of a plurality of rules, said plurality of rules providing constraints for said optimization scenario. However, Ouimet et al. teaches allowing the user to indicate constraints for optimization scenario (Col. 2, lines 19-22; Col. 4, lines 1-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include allowing user to specify constraints as taught by Ouimet et al. because that would allow the user to analyze the constraints associated with the product prices (Col. 4, lines 7-9).

As per **Claim 17**, Kalyan et al. further discloses a method wherein said first price optimization templates further comprise:
a subset re-optimization template, configured to enable said user to prescribe a maximum number of price changes to be determined by execution of said optimization scenario (Col. 3, lines 12-13, 60-67; Col. 4, lines 1-17).

As per **Claim 18**, Kalyan et al. further discloses a method wherein said second price optimization templates comprise:
a price optimization results template, for providing said user with said result data corresponding to said optimization scenario (Col. 2, lines 56-59).

As per **Claim 19 and 32**, Kalyan et al. further discloses a method wherein said result data comprises optimized values and percent values for merchandising factors, wherein said

merchandising factors comprise one or more of the following: volume, revenue, product cost, gross margin and net profit (Col. 4, lines 14-17; Col. 6, lines 33-47).

As per Claim 20, Kalyan et al. discloses a method for providing an interface to an apparatus for optimizing the prices of products for sale, comprising:

utilizing a computer-based scenario/results processor within an optimization server to present a sequence of data entry templates to a user, whereby the user specifies an optimization scenario, the optimization server optimizing the prices according to modeled market demand chain costs for the products; said utilizing comprising
(Col. 2, lines 46-67; Col. 3, lines 1-3, 32-38; Col. 7, lines 53-63):

- selectively limiting the number of prices that are optimized (Col. 3, lines 12-13); and

generating a plurality of optimization results templates and providing these templates to the user, wherein the optimum prices are presented (Col. 2, lines 56-59; Col. 7, lines 60-63).

Kalyan et al. fails to disclose:

- providing a products template, for specifying the products for sale for which the optimum prices are to be determined, wherein the products for sale may span more than one of the plurality of demand groups; and
- providing a category template, for specifying a product category for price optimization, wherein the product category comprises a plurality of demand groups, each of said plurality of demand groups configured to categorize a set of highly correlated products, wherein said highly.

However, Ouimet et al. teaches a menu interface for inputting data. Ouimet et al. also teaches providing a store manager with optimum prices for which to items that are to be sold (Col. 4, lines 57-64). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include inputting the items whose prices are to be optimized.

Phillips et al. teaches categorizing products into categories and then optimizing the prices for those products (Para. 5, 13, 34 and 35). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include grouping products into categories. Phillips et al. provides motivation for grouping products into categories because the optimization model becomes easier to manage due to fewer sets of data (Para. 34).

As per **Claim 21**, Kalyan et al. discloses all of the limitations of claim 20. Kalyan et al. fails to disclose a method wherein said utilizing comprises:

- acquiring data corresponding to the optimization scenario from the user ; and
- formatting the data into a format suitable for performing a price optimization according to the optimization scenario.

However, Ouimet et al. teaches acquiring optimization scenario data from a user and preparing the data prior to processing the data (Col. 3, lines 27-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include acquiring data from a user and formatting the data prior to processing

as taught by Ouimet et al. because it greatly improves the efficiency of the system by providing the user with an efficient user-friendly system.

As per Claim 28, Kalyan et al. discloses all of the limitations in claim 20. Kalyan et al. discloses a method wherein said utilizing further comprises:

- providing an at-large rules template, for specifying rules to govern determination of the optimum prices, wherein the rules specify maximum allowable price swing for each of the products for sale, and maximum allowable swing for the average price of each demand group within the plurality of the demand groups

Kalyan et al. fails to disclose:

- providing a locations template, for prescribing a plurality of store groups for which the optimum prices are to be determined, wherein said prescribing directs said employing to utilize data corresponding to the plurality of said store groups when determining the optimum prices.

However, Ouimet et al. teaches using data to determine optimal prices for stores in the same market to better optimize their own prices (Col. 10, lines 34-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include which stores to determine optimal prices as taught by Ouimet et al. Ouimet et al. provides motivation by revealing that knowing prices of other stores in the market can enable a store to better optimize their own prices (Col. 10, lines 34-44).

As per **Claim 29**, Kalyan et al. further discloses a method wherein said utilizing further comprising:

providing a configured rules template, for prioritizing the rules, wherein, if particular rules conflict, the optimization server optimizes the prices by progressively relaxing constraints prescribed by lower-priority rules
(Col. 19, lines 10-27; Col. 20, lines 1-8).

As per **Claim 30**, Kalyan et al. discloses a method wherein said utilizing comprises:
providing a strategy template, for specifying a merchandising performance figure of merit, and
for prescribing limits for changes in sales volume (Col. 3, lines 12; Col. 4, lines 14-17).

As per **Claim 31**, Kalyan et al. discloses all of the limitations of claim 1. Kalyan et al. discloses a method wherein options for specifying of said merchandising performance figure of merit comprise net profit and revenue (Col. 4, lines 16-17; Col. 11, lines 14-15). Kalyan et al. fails to disclose wherein merchandising performance figure of merit comprises sales volume. However, Ouimet et al. teaches merchandising performance figure of merit comprises sales volume (Col. 5, lines 47-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include sales volume as a merchandising performance figure of merit as taught by Ouimet et al. because a user would want to optimize prices in order to achieve a particular level of sales (Col. 5, lines 47-50).

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Fadey S Jabr
Examiner
Art Unit 3639


THOMAS A. DIXON
PRIMARY EXAMINER

FSJ

Please address mail to be delivered by the United States Postal Service (USPS) as follows:

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